

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and	)	WC Docket No. 11-42
Modernization	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on Universal	)	
Service	)	WC Docket No. 03-109
	)	
Lifeline and Link Up	)	WC Docket No. 12-23
	)	
Advancing Broadband Availability Through	)	
Digital Literacy Training	)	

**REPLY COMMENTS OF SMITH BAGLEY, INC.**

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**REPLY COMMENTS OF SMITH BAGLEY, INC.**

Smith Bagley, Inc. (“SBI”), by counsel and pursuant to the Federal Communication Commission’s (“FCC” or “Commission”) Further Notice of Proposed Rulemaking (“*Further Notice*”) released February 6, 2012,<sup>1</sup> hereby submits these reply comments in the above-referenced proceedings. SBI operates a commercial mobile wireless network in Arizona, New Mexico, Utah and Colorado. SBI has extensive wireless coverage throughout Native American lands, providing service to approximately 123,000 customers, of which approximately 70,000 are Lifeline customers, many residing on Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo lands. SBI appreciates the opportunity to offer comments in this proceeding.

**I. Summary**

SBI’s reply comments address the following points:

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (Feb. 6, 2012) (“*Report and Order*” and “*Further Notice*”, respectively).

- (1) The National Lifeline Eligibility Database should only be used for eligibility checks;
- (2) Tribal Lifeline and Link Up are critical to the continued success of the Lifeline program in Tribal areas and should be maintained in their current form;
- (3) The Commission should provide support for more than one Lifeline per household, especially in Tribal areas;
- (4) There is no compelling policy reason to mandate extension of Lifeline discounts to bundled service offerings and current billing system limitations would make it unreasonably burdensome to do so;
- (5) Further clarity is needed regarding acceptable forms of documentation for customer certifications and annual ETC re-certifications;
- (6) Guidance and flexibility are needed in implementing checks based on descriptive addressing in order to avoid disadvantaging Native Americans living in Tribal areas;
- (7) The location of an eligible telecommunications carrier's (ETC's) switch – which may serve geographic areas spanning state boundaries – should not be used to determine facilities-based status for a particular state.

## **II. Discussion**

### **A. Ensure Appropriate Use of the National Lifeline Eligibility Database**

SBI, along with the vast majority of commenters in this proceeding, wholeheartedly supports establishment of a National Lifeline Eligibility Database.<sup>2</sup> Like most companies, SBI has neither the desire nor the resources to intrude into the personal lives of its customers in order to verify information which establishes program eligibility.<sup>3</sup> Indeed, as AT&T explained: “[A] national database . . . would raise far fewer privacy issues than today’s program where prospective Lifeline customers are required to mail or present in person personally sensitive

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<sup>2</sup> See *Further Notice* at ¶¶ 399-415.

<sup>3</sup> See, e.g., *AT&T Lifeline and Link Up Reform and Modernization NPRM Comments*, WC Docket No. 11-42, *et al.*, at 4 (filed Apr. 2, 2012) (“it is inappropriate for for-profit entities that have a financial interest in the outcome to be reviewing private consumer information in order to make a decision about whether that consumer is eligible for a federal public assistance program.”) (“AT&T Comments”).

documents to the service provider to review.”<sup>4</sup> Nevertheless SBI recognizes that there is a compelling need for a mechanism to ensure Lifeline beneficiaries are accurately certifying their compliance with program rules including their eligibility status.

However, SBI also agrees with AT&T that it is critical that the Commission ensure that Lifeline participants’ personal information is protected with only the minimum necessary information made available to ETCs.<sup>5</sup> It would be wholly inappropriate, for example, if the National Lifeline Eligibility Database became tool that facilitated direct marketing to ETC customers. Indeed, other than information necessary to validate the identity of a particular subscriber and the fact of Lifeline eligibility (*i.e.*, Eligible = Y/N), SBI questions whether any further information needs to be made available to ETCs as part of this process.<sup>6</sup> For example, subscriber names should not be provided to ETCs – rather, the ETC should be required to provide the subscriber name before eligibility is verified.

**B. Preserve Tribal Lifeline and Link Up In Their Current Form**

The Commission asks, in light of recent comprehensive reforms to the high cost program which include significant funding dedicated to serve Tribal areas, “whether the Link Up program for Tribal lands should be modified or eliminated.”<sup>7</sup> The Commission specifically cites concerns about the possibility of providing funding to more than one provider in a geographic area.<sup>8</sup>

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<sup>4</sup> *Id.* at 8.

<sup>5</sup> *See id.*

<sup>6</sup> As AT&T put it:

Lifeline providers should not have any access to additional information about these consumers, such as the underlying public assistance programs they participate in, their household incomes, full social security numbers, or the identities of their Lifeline service provider if the consumers are obtaining the Lifeline benefit from some other providers.

*Id.*

<sup>7</sup> *Further Notice* at ¶¶ 481-482.

<sup>8</sup> *Id.*

However, given historically low telephone penetration rates on Tribal lands – particularly in Navajo areas<sup>9</sup> – and given the Commission’s rolling implementation of its new high cost support mechanisms, SBI believes it is premature for the Commission to be judging the impact of these new mechanisms. For example, the reverse auction for Phase I mobility support will target high cost support to specific census blocks that lack 3G service, but will prioritize limited funding based on those blocks that are the least costly to serve.<sup>10</sup> Thus, it won’t be evident until after auction winners are selected and census blocks to be served are announced that the Commission will would know whether there is a potential for double funding. More to the point, until there is statistical evidence that telephone subscribership on Native lands is closer to the averages in other areas of the country, reductions in support for Lifeline – including the elimination of Link Up in tribal areas are not justified.

Finally, SBI agrees that effects of the recent Lifeline reforms – slated to save \$2 billion over three years – are also unknown and that for that reason it is also premature to begin cutting the Lifeline program in Tribal areas.<sup>11</sup>

### **C. Allow Discounts for Second Lines in Tribal Areas**

As SBI has previously explained, the one-per-residence rule “[does] not provide tribal communities with sufficient services to ensure health and safety, the primary purpose of a

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<sup>9</sup> See *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 11-40, FCC 11-29, at ¶ 4 (2011) (citing *Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands*, Federal Communications Commission, May 2003, at 1 (“Telephone Subscribership Report”); *id.* at 6 (reporting telephone subscribership rate on Navajo lands of 37.4%).

<sup>10</sup> See e.g., *Connect America Fund et al.*, WC Dkt. No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 28 (rel. Nov. 18, 2011) ¶ 28 (noting that the Phase 1 Mobility auction “will maximize coverage of unserved road miles within the budget”), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 8, 2011).

<sup>11</sup> See General Communication, Inc. (“GCI”) *Lifeline and Link Up Reform and Modernization NPRM Comments*, WC Docket No. 11-42, *et al.*, at 5-6 (filed Apr. 2, 2012) (“GCI Comments”).

‘lifeline’ offering.”<sup>12</sup> The *Further Notice* invited commenters to refresh the record concerning adopting a policy of one Lifeline subscription per-eligible adult for tribal areas.<sup>13</sup> SBI reiterates and incorporates by reference its proposal detailed a little over a year ago for allowing a second Lifeline subscriber in households that are below the poverty line – a stricter standard than the 135% of poverty line general eligibility standard.<sup>14</sup>

Regarding the Commission’s proposal to allow a single Lifeline discount to be shared among multiple subscribers in a single household in Tribal areas,<sup>15</sup> SBI agrees with GCI that such a mechanism is of no economic value and yet would be complex to administer.<sup>16</sup> However, the Commission also asked for comment on a rule allowing a less-than-full Lifeline discount for second household lines (not necessarily limited to Tribal areas).<sup>17</sup> SBI would support such a proposal either broadly, or if it were limited to Tribal areas.<sup>18</sup>

#### **D. Extending Discounts to Bundled Offerings Should Not Be Mandatory**

SBI agrees that there are clear benefits to allowing Lifeline discounts to be applied to bundled service offerings that include a voice component.<sup>19</sup> Indeed, to the extent bundling other

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<sup>12</sup> See SBI Comments at 8 (filed Apr. 21, 2011) in *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, *et al.* Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011)) (“SBI NPRM Comments”), available at <http://apps.fcc.gov/ecfs/document/view?id=7021240650>.

<sup>13</sup> *Further Notice* at ¶ 475.

<sup>14</sup> See *SBI NPRM Comments* at 7-9.

<sup>15</sup> *Further Notice* at ¶¶ 476-477.

<sup>16</sup> See *GCI Comments* at 6-7 (“The *only* effect of this proposal would be to yet further increase administrative burden and expenses, as the same support dollars would have to be allocated among multiple lines, and ETCs would have to determine how to provide, track, and bill split discounts, and they might have to modify their systems in order to do so.”) (emphasis in original).

<sup>17</sup> *Report and Order* at ¶ 471.

<sup>18</sup> See *SBI NPRM Comments* at 7-9; see also GCI comments at 7 (also endorsing the partial subsidy for a second Lifeline and noting that such a rule would help “mitigate the manifest public safety risks created by a pure one-per-household rule, and would therefore further the goals of the low-income program.”).

<sup>19</sup> See generally, *Report and Order* at ¶¶ 310-320.

services with voice service provides cost-savings to customers,<sup>20</sup> where feasible there is no reason to prevent companies from making such savings available to Lifeline subscribers.

However, SBI agrees with Cricket and other commenters that it is not appropriate at this time to turn this potential benefit into a mandate.<sup>21</sup> Indeed, for many carriers, billing systems may not be technically capable of supporting application of Lifeline discounts to non-traditional service plans. With all the new compliance obligations ETCs are being required to undertake, there is no reason to impose greater burdens at this time – especially without any tangible understanding of the potential benefits to Lifeline beneficiaries.<sup>22</sup>

**E. Provide Further Clarity Regarding Acceptable Forms of Verification Documentation**

SBI agrees with other commenters that revised section 54.410 needs better clarity regarding the list of acceptable documentation or methods to verify or re-certify eligibility.<sup>23</sup> Moreover, given that the Commission will likely not be able identify every conceivable piece of potentially acceptable supporting documentation, SBI urges the Commission to offer a non-exclusive list of acceptable documents and to explicitly provide the Lifeline administrator with discretion to reasonably extrapolate from the list. Such discretion would be purely

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<sup>20</sup> See *id.* at ¶ 310.

<sup>21</sup> See Leap Wireless International, Inc. and Cricket Communications, Inc., *Lifeline and Link Up Reform and Modernization NPRM Comments*, WC Docket No. 11-42, *et al.*, at 11-12 (filed Apr. 2, 2012) (“it would be premature to mandate application of Lifeline discounts to such plans”) (“Cricket Comments”).

<sup>22</sup> As Cricket observed: “[S]uch an approach would risk increasing demands on the already-strained Lifeline program before the Commission can gain an appropriate understanding of the extent to which Lifeline participants purchase and benefit from bundled services.” See *Cricket Comments* at 12.

<sup>23</sup> See, e.g., Nexus Communications, Inc., *Lifeline and Link Up Reform and Modernization NPRM Comments*, WC Docket No. 11-42, *et al.*, at 6 (filed Mar. 30, 2012) (“Nexus Comments”).



administrative and thus would not violate the limitations governing the administrator's appropriate role.<sup>24</sup>

In addition, the Commission should clarify whether, for the annual recertification process required under section 54.410(f), whether ETCs can use Interactive Voice Recognition (IVR) systems to meet some or all of the requirements in section 54.410(d). Specifically, can the programmatic disclosures to current subscribers be provided and acknowledged using IVR? Can current subscriber information be re-verified and can current subscribers re-certify their eligibility via recordings obtained during an IVR session? SBI can think of no practical or policy reason why refreshing a subscriber's information cannot be done each year using IVR. Moreover, this would reduce administrative burdens to Lifeline subscribers and participating ETCs.

**F. Addressing Requirements Should Not Be Implemented in a Way That Discriminates Against Native Americans living in Tribal areas**

SBI appreciates that the FCC acknowledges that "residential addresses are frequently non-existent on Tribal lands and, where present, often differ significantly from residential addresses off Tribal lands."<sup>25</sup> Notwithstanding, in an effort to protect the program from circumvention of the one-per-household requirement, the FCC established a rule prohibiting subscribers from using a P.O. Box as their Lifeline service address. In recognition of the addressing issues in certain areas including on Tribal lands, the Commission indicated that Lifeline applicants would be allowed to provide a "descriptive address which could be used to

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<sup>24</sup> See 47 C.F.R. § 54.702(c) ("The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.").

<sup>25</sup> See *Report and Order*, ¶ 84 fn. 227 (citing SBI Comments at 14-16 (filed Apr. 21, 2011) in *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, *et al.* Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011)).

perform a check for duplicative support and trigger the requirement to complete the one-per-household [certification] document.”<sup>26</sup>

SBI fully supports the use of a descriptive address, and hopes that the Commission will “define the boundaries for acceptable ‘descriptive address’ designations on tribal and rural lands,” in consultation with tribes and other affected parties.<sup>27</sup> Providing some guidance in this area will be important so that applicants and ETC’s are not left guessing as to what the Commission and the Lifeline administrator will find acceptable. SBI supports a rule that defines an appropriate descriptive address as one that an average person in the community would understand and be capable of locating a residence based on the description.

Because SBI has a substantial number of customers that lack traditional postal addresses, we have significant experience in this area and would be happy to provide suggestions to the Commission regarding possible descriptive conventions. We would caution, however, that descriptive addresses require some flexibility on the Commission’s part. For example, an address like “5 MI NE OF ROCKWELL STORE” could reasonably mean “about” five miles northeast of Rockwell Store. Similarly, there may be more than one way to describe the same location. Thus, five miles northeast of Rockwell Store might also be five miles southwest of some other location. In such cases neither the Commission nor the administrator should presume that such anomalies are intentional much less intended to circumvent program rules. The Commission and the administrator will have to be proactive and patient in working with both ETCs and residents to reach the ultimate objective: establishing as best as reasonably possible information about where Lifeline subscribers actually live.

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<sup>26</sup> See *id.* at ¶ 87.

<sup>27</sup> See *id.* See also, *NCAI, Lifeline and Link Up Reform and Modernization NPRM Comments*, WC Docket No. 11-42, et al., at 4 (filed Apr. 2, 2012) (“NCAI Comments”).

**G. The Location of an ETC's Switch Should Not Determine Whether It Is "Facilities-Based" Lifeline Provider in a Particular State**

Finally, SBI would like to briefly respond to the specific proposal by the Michigan Public Service Commission ("MPSC") asking the Commission to require a carrier's switch to "be in the state in which the provider claims to be facilities-based."<sup>28</sup> SBI simply notes that it utilizes a single switch to serve the "Four Corners" area which spans New Mexico, Arizona, Utah, and Colorado. The idea that any carrier should be required to purchase unnecessary equipment with universal service funding in order to access Lifeline support should be rejected out of hand. There is no reason why any carrier should be penalized for efficient investment – either through a rule limiting its Lifeline service area to be only in the state in which the switch is located, or by imposing an additional regulatory burden on SBI to justify this configuration, as MPSC proposed.<sup>29</sup>

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<sup>28</sup> Michigan Public Service Commission, *Lifeline and Link Up Reform and Modernization NPRM Comments*, WC Docket No. 11-42, *et al.*, at 8-9 (filed Apr. 2, 2012) ("MPSC Comments").

<sup>29</sup> *See id.* at 9 (recognizing that "[i]n some instances, near the borders of the state, exceptions could be made" but that the burden "should be on the provider to show that the switch is being utilized for the Lifeline services offered.").

### **III. Conclusion**

SBI appreciates the Commission's continuing recognition of the unique challenges faced by Native Americans living in Tribal areas. Because SBI's service area encompasses one of the most remote and impoverished Tribal regions in the country, the Low Income programs are unusually important there. Accordingly, we respectfully request the Commission take due notice of SBI's comments in this matter.

Respectfully submitted,



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